

SERVED: April 15, 1993

NTSB Order No. EA-3853

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of April, 1993

_____)	
Petition of)	
)	
CHARLES WEBBER,)	
Petitioner,)	
)	
v.)	
)	Docket No. CD-17
JOSEPH DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Petitioner seeks review of an April 15, 1991 order issued by Administrative Law Judge Patrick G. Geraghty.¹ In his order, the law judge dismissed for lack of jurisdiction petitioner's requests that the Board review the FAA's denial of a certificate and that the Board order the FAA to extend the effectiveness of his written test results to provide him additional time to

¹A copy of that order is attached.

complete the certification process. We deny petitioner's appeal, and affirm the law judge's dismissal.

Petitioner's private pilot certificate was revoked in 1986. Administrator v. Webber, 5 NTSB 1120 (1986).² The record discloses that petitioner took the Airman Written Test on June 29, 1988. He, therefore, had until June 30, 1990 to satisfy remaining flight test requirements to receive a certificate premised on the June 1988 written test results. In light of the prior revocation, by letter of May 10, 1990, he asked the FAA to issue the necessary letter-authorization for him to apply for new airman certificates.

On June 10, 1990, in the absence of a response from the FAA, the instant petition was filed seeking Board elimination of the letter-authorization requirement, a Board order directing the FAA to produce the necessary letter authorization, and/or a Board order directing the FAA to extend the expiration date of petitioner's written test results. On June 13, 1990, the FAA authorized petitioner to apply and re-qualify for new airman certificates. There is no information in the record as to whether petitioner used the time available before the June 30 expiration date to take his check rides.³

²Among other things, petitioner refused to obtain a medical certificate, claiming that this requirement was unconstitutional.

³It would appear he did not. See Reply at footnote 2. Although the FAA had acted, petitioner did not consider the issues moot. He still sought an extension of the June 30 expiration date, and challenged the FAA's authorization procedure itself.

The law judge concluded that, as the FAA had not denied petitioner's application for a certificate, the Board was without jurisdiction to review the Administrator's actions in this matter. On appeal, petitioner urges that denial of an application can come in many subtle forms (such as the alleged delay here in authorizing requalification) and that the Board should take jurisdiction of them.

We cannot agree with petitioner's view of our authority. In Administrator v. Florida West Airlines, Inc., 5 NTSB 992, 993 (1986), we stated:

The Board has no general supervisory role with regard to any FAA function and such authority that we do have over FAA orders affecting carrier certificates is limited to the amendment, modification or reversal of those orders which we have concluded under the air safety standard in Section 609 should not be affirmed.

In that case, we denied a request that we stay prosecution of a civil penalty.

Ordering the Administrator to act on a pending request or to take a particular action committed to his discretion is not within our scope of authorized activities, nor do we have authority to second-guess the FAA's adopted procedures, including its procedure requiring the letter of authorization.

Administrator v. Ewing, 1 NTSB 1192, 1194 (1971) ("[I]t is well settled that the Board does not have authority to pass on the reasonableness or validity of FAA regulations, but rather is limited to reviewing the Administrator's findings of fact and actions thereunder."). See also Administrator v. Lloyd, 1 NTSB 1826, 1828 (1972); and Administrator v. Galloway, 1 NTSB 2104,

2105 (1972).

Moreover, we have held in other contexts that FAA actions similar to those to which petitioner objects are not subject to our review. See, e.g., Administrator v. Schart, NTSB Order EA-3718 (1992) (letter from FAA indicating belief that certificate was invalid and inviting its surrender is not a reviewable order). In connection with petitioner's request that we order the FAA to extend the expiration date of petitioner's written test results, see also Administrator v. Booher, NTSB Order EA-3733 (1992) (respondent not entitled to Board review of the Administrator's failure to act on a request for waiver).

Petitioner offers no reason why the avenue of relief that is otherwise available -- a writ of mandamus seeking agency action -- is inadequate to address his concerns of agency foot dragging or that a petition for review of FAA procedures, as applied to petitioner, is inadequate to review his claims on the merits.⁴

⁴Even if we had jurisdiction under some sort of constructive denial theory, this would not be a good case in which to exercise it. The Administrator acted within a reasonable time of the request, and there is no showing why petitioner did not seek authorization well before the end of the 2-year period or why he did not use the time available to him after the FAA acted to complete the necessary requirements for a certificate.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied; and
2. Dismissal of the petition is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.